

**STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION**

Ballot Issue Committee Guidance (May 2008)

This guidance is issued in response to questions regarding the application of Hawaii's campaign finance laws in the 2008 election period to a ballot issue committee.

I. Definition of a ballot issue committee

"Ballot issue committee" means a committee¹ as defined in this section which has the exclusive purpose of making or accepting contributions or expenditures for or against any issue appearing on the ballot at the next applicable election.² (Emphasis added.) (This does not include an individual making independent expenditures using personal funds.)

II. Registration; reporting and other requirements

A ballot issue committee must file an organizational report to register with the Commission as a noncandidate committee³ if the following requirements are met:

- The issue is certified to be on the ballot at the next applicable election. The appropriate government agency (e.g., Honolulu City Clerk's Office) or the Lieutenant Governor in the case of the Constitutional Convention will certify an issue. In a letter, dated December 11, 2007, the Lieutenant Governor certified to the state Office of Elections that a question would

¹ "Committee" means:

(1) Any organization, association, or individual that accepts or makes a contribution or makes an expenditure for or against any:

(A) Candidate;
(B) Individual who files for nomination at a later date and becomes a candidate; or
(C) Party;

with or without the authorization of the candidate, individual, or party. In addition, the term "committee" means any organization, association, or individual who accepts or makes a contribution or makes an expenditure for or against any question or issue appearing on the ballot at the next applicable election; or

(2) Any organization, association, or individual that raises or hold money or anything of value for a political purpose, with or without the consent or knowledge of any:

(A) Candidate;
(B) Individual who files for nomination at a later date and becomes a candidate; or
(C) Party; and

subsequently contributes money or anything of value to, or makes expenditures on behalf of, the candidate, individual, or party. Notwithstanding any of the foregoing, the term "committee" shall not include any individual making a contribution or expenditure of the individual's own funds or anything of value that the individual originally acquired for the individual's own use and not for the purpose of evading any provision of this subpart, or any organization, which raises or expends funds for the sole purpose of the production and dissemination of informational or educational advertising. Hawaii Revised Statutes (HRS) §11-191.

² HRS §11-191

³ "Noncandidate committee" means a committee as defined in this section that has the purpose of making contributions or expenditures to influence the nomination for election, the election of any candidate to political office, or for or against any issue on the ballot, but does not include a candidate's committee.

appear on the 2008 General Election ballot that asks voters whether they are in favor of a Constitutional Convention.⁴

- The committee receives contributions or makes expenditures that amount to more than \$1,000, in the aggregate, in a two-year election period.⁵

The committee's organizational report must be filed within ten days of receiving contributions or making expenditures that exceed this \$1,000 threshold; except that within the thirty day period prior to an election, a noncandidate committee shall file an organizational report within two days of receiving contributions or making expenditures that amount to more than \$1,000, in the aggregate, in a two-year election period.

In order to determine whether the threshold is met, contributions or expenditures are aggregated beginning on the date of certification of the issue.

The ballot issue committee must comply with reporting and other requirements of the law applicable to a noncandidate committee, including the following:

- Appointing a chairperson;⁶
- Appointing a treasurer;⁷
- Appointing a custodian of books;⁸
- Opening a bank account and depositing all contributions and making all expenditures from that account;⁹
- Not accepting or making any loans;¹⁰
- Filing preliminary, final, and supplemental reports with the Commission which disclose information regarding contributions and expenditures;¹¹ and
- Retaining complete records for at least five years.¹² The "[r]ecords shall include vouchers, worksheets, and receipts which shall provide in sufficient detail the necessary information and data, from which the reports

⁴ The legislature may submit to the electorate at any general or special election the question, "Shall there be a convention to propose a revision of or amendments to the Constitution?" If any nine-year period shall elapse during which the question shall not have been submitted, the lieutenant governor shall certify the question, to be voted on at the first general election following the expiration of such period. Hawaii State Constitution, Article XVII, Section 2.

⁵ HRS §11-194(e)

⁶ HRS §11-196.5(a)(7)

⁷ HRS §11-198

⁸ HRS §11-196.5(a) (10).

⁹ HRS §11-199(a).

¹⁰ HRS §11-205.6

¹¹ HRS §§11-212 and 11-213.

¹² Section 2-14.1-6, Hawaii Administrative Rules (HAR)

and statements may be verified, explained, or clarified, and checked for accuracy and completeness."¹³

The following reports are due for the 2008 election period:

| Due date | Reporting period | Report |
|--------------------|--|---|
| September 10, 2008 | January 1 through September 5, 2008 | Preliminary Primary |
| September 17, 2008 | September 6 through September 16, 2008 | Late Contributions Report ¹⁴ |
| October 10, 2008 | September 6 through September 20, 2008 | Final Primary Report |
| October 27, 2008 | September 21 through October 20, 2008 | Preliminary General Report |
| November 3, 2008 | October 21 through October 31, 2008 | Late Contributions Report ¹⁵ |
| December 4, 2008 | October 21 through November 4, 2008 | Final Election Period Report |

Additional information is available in the Commission's 2008 Guidebook For Noncandidate Committees. The Guidebook may be downloaded at the Commission's website at www.hawaii.gov/campaign by clicking "Forms & Publications", clicking "Noncandidate Committee Forms," and then clicking 2008 Guidebook.

III. Contributions to a ballot issue committee

A person contributing to a ballot issue committee is **not** subject to the contribution limits in section 11-204, Hawaii Revised Statutes ("HRS")¹⁶ (i.e., the \$1,000 cap per person per election for contributions to a noncandidate committee is not applicable when a person contributes to a ballot issue committee).

A candidate, generally, may not contribute campaign funds to a ballot issue committee. While a candidate is allowed to donate campaign funds to eligible community and educational groups subject to limitations, the eligible groups do not include "organizations established temporarily to advocate or promote political or ballot issues"¹⁷ unless the ballot issue involves a "question, or issue with which...(the candidate)...is directly associated."¹⁸

¹³ Id.

¹⁴ The "Late Contributions Report" (Form NC-4) is for reporting contributions received from any person or entity that aggregates more than \$500 and for reporting contributions made to candidates that aggregates more than \$500 during the period of fourteen calendar days through four calendar days prior to the Primary Election. Late Contributions must also be reported on the Final Primary Report. The report is not required if there are no Late Contributions. Note: This is one form that may be faxed.)

¹⁵ (The "Late Contributions Report" (Form NC-4) is for reporting contributions received from any person or entity that aggregates more than \$500 and for reporting contributions made to candidates that aggregates more than \$500 during the period of fourteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions. Note: This is one form that may be faxed.)

¹⁶ HRS §11-204(k)

¹⁷ Section 2-14.1-14(b) (2), HAR.

IV. Advertisement by a ballot issue committee

An “advertisement”¹⁹ by a ballot issue committee must contain the words “Paid for By” and the name and address of the committee paying for the advertisement.²⁰

V. After the election

After the election, the ballot committee may remain open or terminate, subject to the requirements of the law.²¹

To terminate, a ballot issue committee shall:

- Cease receiving contributions or making expenditures;
- Expend all funds (no surplus);
- Pay all expenditures (no deficit);
- Pay all outstanding penalties, if any;
- Close the bank account and provide a copy of the closing statement to the Commission;
- File all required reports with the Commission;²² and
- Obtain approval by the Commission to terminate.

The “Request for Registration Termination” form should be filed with the Commission for approval to terminate the committee’s registration.

If the ballot committee remains open, it must continue to file all required reports, even if there are no contributions received or expenditures made in a reporting period.

¹⁸ HRS §11-200(a)(1)(B)

¹⁹ “Advertisement” means:

(1) Any communication, exclusive of bumper stickers or other sundry items, that:

(A) Identifies a candidate either directly or by direct implication;

(B) Advocates or supports the nomination for election of the candidate;

(C) Advocates or supports the election of the candidate; or

(D) Advocates or supports the candidate’s defeat.

(2) Any communication, exclusive of bumper stickers or other sundry items, that:

(A) Identifies an issue or question that will appear on the ballot at the next applicable election; or

(B) Advocates or supports the passage or defeat of the question or issue. HRS §11-191.

²⁰ HRS §11-215

²¹ HRS §11-213

²² The first report due for the 2010 election period is due on February 2, 2009 for the reporting period from November 5 through December 31, 2008.